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5 Attorneys for Plaintiff
SHELTER ISLAND YACHTWAYS, LTD,
6 a California Limited Partnership,
dba SHELTER ISLAND BOATYARD

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 SHELTER ISLAND YACHTWAYS, LTD, a
11 California Limited Partnership, dba SHELTER
ISLAND BOATYARD,

12 Plaintiff,

13 | v.

14 M/Y SUNDANCE, Official No. 521498, A
HATTARAS MOTORYACHT OF
15 APPROXIMATELY 33 FEET IN LENGTH
AND 12 FEET IN BEAM, AND ALL OF HER
16 ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
17 APPURTENANCES, *in rem*,

18 Defendant.

Civil No. 07 CV 2015 DMS WMc
IN ADMIRALTY

**DECLARATION OF PHILIP E.
WEISS IN SUPPORT OF REQUEST
TO ENTER DEFAULT**

20 I, Philip E. Weiss, declare under penalty of perjury under the laws of the United States
21 and the State of California the following is true and correct:

22 1. I am an attorney in good standing, licensed to practice before all State and
23 Federal Courts located in the State of California, including this Honorable Court. I am
24 counsel of record of the Plaintiff in this action, SHELTER ISLAND YACHTWAYS, LTD, a
25 California Limited Partnership, dba SHELTER ISLAND BOATYARD

26 2. This Declaration is offered in support of Plaintiff SHELTER ISLAND
27 YACHTWAYS, LTD's request that the Clerk of the above-entitled Court enter a Default in
28 this action against the *in rem* Defendant Vessel: M/Y SUNDANCE, Official No. 521498 A

HATTERAS MOTORYACHT OF APPROXIMATELY 33 FEET IN LENGTH AND 12 FEET IN BEAM.

3. On October 17, 2007 I caused Plaintiff's Verified Complaint to be filed with this Court.

4. As more fully appearing from and evidenced by a Process Receipt and Return (U.S. Marshal Form 285) which has been executed by the U.S. Marshal, service was effected on the Defendant Vessel on November 8, 2007 by the United States Marshal's office, which on that date posted the Verified Complaint and other vessel arrest documents on the Defendant Vessel and took her into custody. A true and correct copy of this Process Receipt and Return is attached hereto as Exhibit A.

5. In addition, service of the Summons, the Verified Complaint and other documents offered in connection with and in support of the instant vessel arrest in this action was effected on October 17, 2007 on the documented owner of the DEFENDANT VESSEL, as evidenced by the Declaration of Service which is hereto attached hereto as Exhibit B and which is on file in this action:

Mr. Wayne Oliver
P.O. Box 3179
Kerby, OR 97531-3179

[Defendant Vessel's Documented Owner]

Neither the above named individual, nor any other person or entity, have intervened or otherwise appeared in this action, and none has responded to the Verified Complaint on behalf of the Defendant Vessel within the time prescribed by the Federal Rules of Civil Procedure.

6. No party or person has, as required by Supplemental Admiralty Rule C(6)(a)(i), filed a Statement of Interest in or Right Against the Property within 30 days after publication is completed pursuant to Supplemental Admiralty Rule C(4). The completion of the required publication is evidenced by the true and correct copy of the U.S. Marshal Certificate of Publication attached hereto as Exhibit C.

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7. I respectfully urge that the Clerk of this Honorable Court enter the Default of the *in rem* Defendant Vessel.

Executed this 7th day of December, 2007 at San Diego, California.


Philip E. Weiss

c:\sib\weiss declaration support request enter default.wpd

**U.S. Department of Justice
United States Marshals Service**

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF

*Shelter Island Yachtways, A California
Limited Partnership and Shelter Island Boatyard*

DEFENDANT

*Mr. BALANCE, THOMAS, 5176, a Hawaiian
citizen and resident of approx 33 feet in length and 12 feet in beam
located at Shelter Island Yacht Club, San Diego, CA 92116*

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
my SURFACE interest, 5176, SAILboat, a Hawaiian citizen and resident of approx 33 feet in length and 12 feet in beam located at Shelter Island Yacht Club, San Diego, CA 92116

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

AT

Shelter Island Yacht Club, 2330 Shelter Island Dr., San Diego, CA 92116

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

*WESSE A. JONES
Attn. of: Bill Hobbs, Esq.
1551 Shelter Island Drive
San Diego, CA 92116*

COURT CASE NUMBER

07CV2015 DMS WMC

TYPE OF PROCESS *IN REM*

VIS 815 5212018

Number of process to be served with this Form - 285

Number of parties to be served in this case

Check for service on U.S.A.

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

*PLEASE SEIZE, TAKE INTO POSSESSION AND HOLD until complaint is filed
documents on the defendant vessel, my SURFACE, which measures 214'11" x
a Hawaiian citizen and resident of approx 33 feet in length and 12 feet in beam,
where she lies at Shelter Island Yacht Club, as instructed by court as
soon as possible. PLEASE contact Bill Hobbs, Esq., Roy Hobbs, Esq.,
at 619-222-0481, in advance to advise of date and time of seizure. Thank you.*

Signature of Attorney or other Originator requesting service on behalf of:

PLAINTIFF
 DEFENDANT

TELEPHONE NUMBER

619-225-8884

DATE

10-16-07

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated.

(Sign only first USM 285 if more than one USM 285 is submitted)

Total Process

District of Origin

District to Serve

Signature of Authorized USMS Deputy or Clerk

Date

I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service	Time
10-16-07	10:00 AM

Signature of U.S. Marshal or Deputy

am

pm

Service Fee

Total Mileage Charges
(including endeavors)

Forwarding Fee

Total Charges

Advance Deposits

Amount owed to U.S. Marshal or

Amount of Refund

REMARKS:

NOTE

WEISS & JONES
Philip E. Weiss, Esq. (No. 152523)
1551 Shelter Island Drive
San Diego, California 92106
Telephone: (619) 225-8884
Facsimile: (619) 225-8801

5 Attorney for Plaintiff
SHELTER ISLAND YACHTWAYS, LTD.,
a California Limited Partnership,
6 dba SHELTER ISLAND BOATYARD

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

'07 CV 2015 DMS WMc

SHELTER ISLAND YACHTWAYS, LTD, a
California Limited Partnership, dba SHELTER
ISLAND BOATYARD,

Plaintiff.

M/Y SUNDANCE, Official No. 521498, A
HATTERAS MOTORYACHT OF
APPROXIMATELY 33 FEET IN LENGTH
AND 12 FEET IN BEAM, AND ALL OF HER
ENGINES, TACKLE, ACCESSORIES,
EQUIPMENT, FURNISHINGS AND
APPURTENANCES, *in rem*.

Defendant.

Case No.

IN ADMIRALTY

DECLARATION OF SERVICE

F.R.C.P. Supplemental Admiralty Rules C and E.

46 U.S.C. Sections 30101-31343

DECLARATION OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in San Diego County, State of California. I am over the age of eighteen (18) and not a party to this action; my business address is 1551 Shelter Island Drive, San Diego, California 92106. On October 17, 2007, I served the following document(s) described as:

- Summons in a Civil Action
 - Civil Cover Sheet

- 1 - **Verified Complaint of Plaintiff Shelter Island Yachtways For Vessel Arrest,**
- 2 **Interlocutory Sale And for Money Damages for: (1) Trespass, (2) Fraud In The**
- 3 **Inducement, (3) Breach Of Implied Maritime Contract, (4) Quantum Meruit**
- 4 - **Ex Parte Application for Order Authorizing Issuance of a Warrant for Arrest of**
- 5 **Defendant Vessel**
- 6 - **Declaration of Philip E. Weiss In Support of Vessel Arrest**
- 7 - **[Proposed] Order Authorizing Arrest of Defendant Vessel Pursuant to**
- 8 **Supplemental Admiralty Rule C**
- 9 - **Application for Appointment of Substitute Custodian and for Authorization for**
- 10 **Movement of Defendant Vessel**
- 11 - **Declaration of Roy Hobbs In Support of Ex Parte Application for Order**
- 12 **Appointing Substitute Custodian**
- 13 - **[Proposed] Order Appointing Substitute Custodian and Authorizing Movement of**
- 14 **Vessel**
- 15 - **Warrant for Action In Rem**
- 16 - **Notice of Vessel Arrest**

17 on the interested parties in Case No. _____ by placing [] the original

18 [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

19 Mr. Wayne Oliver

20 P.O. Box 3179

21 Kerby, OR 97531-3179

22 [] **(BY PERSONAL SERVICE):** Personal service accomplished by [] attorney service or
23 [] _____, employed by Weiss & Jones.

24 [] **(BY FACSIMILE AS INDICATED ABOVE):** I caused the foregoing document(s) to be
25 sent via facsimile transmission to the above addressee(s) at the facsimile numbers indicated above.

26 [X] **(BY MAIL AS INDICATED ABOVE):** As follows: I am "readily familiar" with the firm's
27 practice of collection and processing correspondence for mailing. Under that practice it would be
28 deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego,

1 California in the ordinary course of business. I am aware that on motion of the party served, service
2 is presumed invalid if postal cancellation date or postage meter date is more than one day after
3 deposit for mailing in affidavit.

4 **(STATE):** I declare under penalty of perjury under the laws of the State of California that
5 the foregoing is true and correct.

6 **(FEDERAL):** I declare that I am employed in the office of a member of the bar of this court
7 at whose direction the service was made.

8 Dated: October 17, 2007

Tamara A. Geehan

9 Tamara A. Geehan

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CERTIFICATE OF PUBLICATION

RECEIVED

2007 NOV 14 A 2:04

U.S. MARSHAL
SOUTHERN DISTRICT OF
CALIFORNIA

Andrea Scott
 US Marshal
 940 Front Street, Room B-150
 San Diego CA 92101

IN THE MATTER OF
Vessel Arrest M/Y SUNDANCE

INADMISSIBILITY
 NOTICE OF VESSEL ARREST
 F.R.C.P. Supplemental Rule C and E
 46 U.S.C. Sections 30101-31343

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF

CALIFORNIA

Case No. 07-CV-2015

SHELTER ISLAND YACHTWAYS,
 LTD., California Limited Partnership,
 dba SHELTER ISLAND BOATYARD,
 Plaintiff

vs.
 M/Y SUNDANCE, Official No. 521498, a
 Hatteras Motor yacht, of
 approximately 33 feet in length and 12 feet in beam,
 and all of her engines, tackle,
 accessories, equipment,
 furnishings, and
 appurtenances, in rem.

Defendant.

NOTICE IS HEREBY GIVEN pursuant to Rules C and E of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure and Local rules of the United States District Court in and for the Southern District of California, that on the 20th day of November, 2007, the United States Marshal arrested, seized, and took into its possession the vessel, M/Y SUNDANCE, Official No. 521498, a Hatteras Motor yacht, of approximately 33 feet in length and 12 feet in beam, and all of her engines, tackle, accessories, equipment, furnishings, and appurtenances, for the causes set forth in the Verified Complaint, to wit: Trespass, Fraud in the Inducement, Breach of Implied Maritime Contract and Quantum Meruit, now pending in the United States District Court for the Southern District of California, at San Diego.

The amount demanded in the Verified Complaint is a sum of \$550,000.00, day beginning September 12, 2007, and continuing until such time as the DEFENDANT VESSEL is either removed from Plaintiff's premises or until she is taken into custody by the U.S. Marshal pursuant to Order of this Court, plus pre-judgment interest and costs of suit (including attorney fees).

This Arrest was made pursuant to an Order and Warrant for Arrest issued by the Clerk of the Court on about November 20, 2007.

I hereby give notice to all persons claiming any interest in the said DEFENDANT VESSEL, or having anything to do with the same, should not be condemned and forfeited, that they file their claims pursuant to Rule C(6) Supplemental Rules of the Federal Rules of Civil Procedure, with the Clerk of the United States District Court, at San Diego, and serve a copy of it on attorneys for Plaintiff, WEISS & JONES, LLP, within ten (10) days after the date of first publication, or within such additional time as the Court may allow, and must serve their answers within twenty (20) days after the filing of their claims, and that all interested persons should file claims and answers within the time so fixed; otherwise, default will be noted and condemnation ordered against any such person not so proceeding.

Dated: November 8th, 2007
 Steven C. Stafforino

Acting U.S. Marshal

By/s/ Tom Wheeley, Deputy U.S. Marshal

SUBMITTED ON OCTOBER 29, 2007

WEISS & JONES

By/s/ Philip E. Weiss

Attorneys for Plaintiff

SHELTER ISLAND YACHTWAYS, LTD.

California Limited Partnership, dba

SHELTER ISLAND BOATYARD

Pub. Nov. 9-0032832

CASE NO.

07-CV 2015

I, Jacqueline R. Burnett, am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not party to or interested in the above entitled matter. I am the principal clerk of the San Diego Transcript, a newspaper of general circulation, printed and published daily, except on Saturdays and Sundays, in the City of San Diego, County of San Diego and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

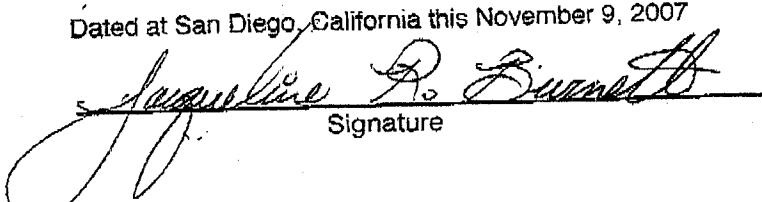
Notice of Vessel Arrest

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

November 9

I certify under penalty of perjury that the forgoing is true and correct.

Dated at San Diego, California this November 9, 2007



Signature